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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re
BENJA INCORPORATED,

Debtor.

Case No. 20-30819-DM

Chapter 7

**SUPPLEMENTAL DECLARATION
OF KYLE EVERETT IN SUPPORT
OF CHAPTER 7 TRUSTEE'S
MOTION TO APPROVE
COMPROMISE OF
CONTROVERSY WITH MHC
FINANCIAL SERVICES, LLC**

[No Hearing Unless Requested; Notice
and Opportunity for Hearing Filed
Pursuant to B.L.R. 9014-1(b)(3)]

I, Kyle Everett, declare as follows:

1. I am the duly appointed Chapter 7 Trustee of the bankruptcy estate (the "Estate") of Benja Incorporated (the "Debtor") in the above-captioned case (the "Bankruptcy Case"). I was appointed as the Chapter 11 Trustee in the Bankruptcy Case on or about November 3, 2020. On or about January 29, 2021, the Bankruptcy Case was converted to Chapter 7 and I was appointed as Chapter 7 Trustee (the "Trustee"). All statements in this Supplemental Declaration are based on my own personal knowledge and observation, or upon

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1 information and belief based upon my review of the court and business records in this case. If
2 called to testify on this matter, I could and would competently testify to the matters set forth in
3 this Supplemental Declaration.

4 2. I make this Supplemental Declaration in support of the Motion to Approve
5 Compromise of Controversy with the MHC Financial Services, LLC and related pleadings
6 (ECF 170, 170-1, 171, collectively, the “Motion”). The Motion seeks entry of an order
7 approving the settlement agreement (the “Settlement Agreement”) reached between myself as
8 Trustee, on the one hand, and MHC Financial Services, LLC, formerly known as MHC
9 Financial Services, Inc. (“MHC”), on the other hand (together the Trustee and MHC are
10 defined as the “Parties”).

11 3. The Moving Papers state that “applying the same assumptions regarding the
12 total amount of the Bankruptcy Estate’s assets and liabilities shows that, under the net payment
13 and withdrawal-of-claim approach, general unsecured creditors are estimated to receive .38%
14 more on their claims than if MHC paid the gross amount to the Bankruptcy Estate and did not
15 withdraw its Proof of Claim.” This statement contained an inadvertent math error of the
16 *estimated* recovery to creditors. The correct statement should be: “applying the same
17 assumptions regarding the total amount of the Bankruptcy Estate’s assets and liabilities shows
18 that, under the net payment and withdrawal-of-claim approach, general unsecured creditors are
19 estimated to receive 1.97% less on their claims than if MHC paid the gross amount to the
20 Bankruptcy Estate and did not withdraw its Proof of Claim.” Other than as modified above, the
21 Moving Papers remain unchanged. This modification to the Moving Papers does not change
22 my conclusion, in my reasonable business judgment, that the Settlement Agreement fulfills the
23 *A & C Properties* factors set forth in *Martin v. Kane (In re A & C Properties)*, 784 F.2d 1377,
24 1380-81 (9th Cir. 1986); *cert. den. sub nom Martin v. Robinson*, 479 U.S. 854 (1986) and
25 should be approved. I reaffirm each of the A&C Properties factors set forth in my originally-
26 filed declaration (ECF 170-1, the “Declaration”) and supplement them as follows: Regardless
27 of whether creditors obtain slightly more or slightly less under the Settlement Agreement
28 versus a litigated resolution in which MHC pays money to the bankruptcy estate, files a claim
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1 for the amount paid, and receives a pro-rata distribution from the estate, the Settlement
2 Agreement is far preferable economically to the estate than a litigated resolution. I base this
3 conclusion on the facts set forth in my Declaration and further state:

- 4 a. Litigating the Alleged Fraudulent Transfer Claims¹ would be highly fact
5 intensive and, therefore, quite costly to the estate. I estimate that it would
6 require at least \$300,000 in attorneys' fees and costs to reach a judgment
7 against MHC on account of the Alleged Fraudulent Transfer Claims.
- 8 b. The probability of success on the Alleged Fraudulent Transfer Claims is far
9 from clear. I contend that the evidence strongly supports the avoidance of
10 some of transfers as received via actual fraud under a Ponzi scheme
11 orchestrated by Mr. Chapin, who pled guilty to crimes related to his fraud in
12 operating the Debtor and deceiving investors and lenders with fabricated
13 accounts receivable and financial statements. I am informed and believe that
14 case law provides a presumption of actual fraud when, as here, there is a
15 criminal plea establishing the elements of a Ponzi scheme and when the
16 transfers were made in the course of such Ponzi scheme. Despite this
17 presumption, however, I still bear the burden of establishing that the
18 transfers made to MHC were part of a Ponzi scheme orchestrated by Mr.
19 Chapin, which MHC strenuously disputes and I expect would vigorously
20 litigate.
- 21 c. Achieving a litigated judgment against MHC would come at significant
22 inconvenience, delay, and risk to the Estate.
- 23 d. Absent a settlement, I anticipate that MHC would appeal the Partial
24 Summary Judgment Order, which found in favor of the Estate on the
25 Alleged Preference Claims. Although I am confident that the Estate would
26 prevail on appeal, defending the Partial Summary Judgment Order on appeal

27 ¹ Defined terms not defined herein shall have the meaning ascribed to them in my originally-
28 filed declaration. ECF 170-1.

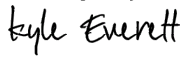
1 would be expensive and time consuming, and would add an estimated one to
2 three years of delay or more, depending on whether the expected appeal
3 ended with the Bankruptcy Appellate Panel, or went to the Ninth Circuit
4 Court of Appeals after the BAP, and depending on whether the appellate
5 court(s) remanded any issues to the Bankruptcy Court.

- 6 e. The Settlement Payment alone, albeit netted from a gross payment to a net
7 payment, which requires the Parties to make educated assumptions about the
8 estate's assets and liabilities, represents a full recovery on account of the
9 Estate's Alleged Preference Claims and an estimated 50% recovery on the
10 Estate's Alleged Fraudulent Transfer Claims—without incurring the
11 anticipated substantial costs to the Estate if these claims were to be litigated.
12 A key part of the netting of MHC's payment into the Estate against the
13 Estate's obligation to MHC under section 502(h) is the withdrawal of the
14 MHC Claim, and waiver of MHC's creditor rights against the Estate,
15 including MHC's appeal rights as to the Partial Summary Judgment Order.

16 4. In summary, the estimate provided in the Motion of the gross equivalent of the
17 net \$2,400,000 Million settlement was simply that, *i.e.* an estimate. In my reasonable business
18 judgment, the Settlement Agreement is a significantly better alternative to further litigation, is
19 fair and equitable, is within the range of reasonableness, and is in the best interest of the Estate.

20 I declare under penalty of perjury under the laws of the United States, that the foregoing
21 is true and correct. Executed in Sonoma County, California on August 14, 2023.

22 DocuSigned by:

23 

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25 Kyle Everett, Solely in my Capacity as
26 Chapter 7 Trustee of the Benja Incorporated
27 Bankruptcy Estate
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